

HOUSE No. 1284

By Mr. Smizik of Brookline, petition of Frank I. Smizik and others for legislation to authorize municipalities to protect low and moderate income tenants and units of governmentally involved housing. Housing.

The Commonwealth of Massachusetts

PETITION OF:

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In the Year Two Thousand and Seven.

AN ACT AUTHORIZING MUNICIPALITIES TO PROTECT LOW AND MODERATE INCOME TENANTS AND UNITS OF GOVERNMENTALLY INVOLVED HOUSING.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 The General Laws are hereby amended by inserting after chapter
- 2 40P the following chapter:—

4 **PROTECTION OF LOW AND MODERATE INCOME TENANTS**
5 **AND UNITS OF GOVERNMENTALLY INVOLVED HOUSING.**

6 Section 1. The general court finds and declares that: (a) a serious
7 public emergency exists with respect to the housing of a substantial
8 number of persons in certain areas of the commonwealth residing in
9 governmentally involved housing, inasmuch as there is a threat that
10 many low-income individuals and families residing in such housing,
11 particularly those elderly and disabled, may be threatened with dis-
12 placement as a result of prepayment of mortgage financing, loss of
13 use or rent restrictions, expiring subsidy contracts, and expected
14 increases in rent, and there is a threat that affordable housing stock
15 will be lost due to expiration of use or rent restrictions and such pre-
16 payment, further exacerbating an extreme housing shortage for low-
17 income families and individuals; (b) it is the commonwealth's policy
18 to encourage owners of this governmentally involved housing to
19 accept incentives to keep such housing affordable and avert dis-
20 placement; (c) such emergency should be met by the commonwealth
21 immediately and with due regard for the rights and responsibilities
22 of its local communities; therefore, this chapter is declared to be in
23 the public interest.

24 Section 2. The following words or phrases as used in this chapter
25 shall have the following meanings:

26 (A) "governmentally-involved housing," means any residential
27 housing project constructed, rehabilitated, or assisted pursuant to
28 any one or more of the following governmental programs:

29 (1) section 202 of the Housing Act of 1959, 12 U.S.C. section
30 1701q;

31 (2) section 221(d) of the National Housing Act, 12 U.S.C. section
32 1715l(d);

33 (3) section 236 of the National Housing Act, 12 U.S.C. section
34 1715z-1;

35 (4) any project-based programs for low-income persons under
36 section 8 of the United States Housing Act of 1937, 42 U.S.C.
37 section 1437f;

38 (5) the Rent Supplement Program under section 101 of the
39 Housing and Urban Development Act of 1965, 12 U.S.C. section
40 1701s;

41 (6) the U.S. Department of Agriculture's Rural Rental Housing
42 Program under section 515 of the Housing Act of 1949, 42 U.S.C.
43 section 1490a;

44 (7) the Urban Development Action Grant, hereinafter referred to
45 as UDAG, 42 U.S.C. section 5318, or the Housing Development
46 Action Grant, hereinafter referred to as HoDAG, 42 U.S.C. section
47 1437o, in either case to the extent the project's rents are restricted or
48 regulated pursuant to a grant agreement with the U.S. Department of
49 Housing and Urban Development or otherwise;

50 (8) the federal low-income housing tax credit program under
51 section 42 of the U.S. Internal Revenue Code, 26 & S.C. section 42;

52 (9) chapter 121A of the General Laws to the extent the chapter
53 121A approvals restrict the affordability of the project's dwelling
54 units;

55 (10) section 13A of chapter 708 of the Acts of 1966, as amended;

56 (11) section 811 of the Cranston-Gonzalez National Affordable
57 Housing Act, as amended (42 U.S.C. section 8013);

58 (12) section 207 of the National Housing Act, 12 U.S.C. section
59 1713, and subject to a rent regulatory agreement pursuant to chapter
60 121A of the General Laws;

61 (13) section 220 of the National Housing Act, 12 U.S.C. section
62 1715k(a) and (h), and subject to a rent regulatory agreement pur-
63 suant to chapter 121A of the General Laws; or

64 (14) the project-based Massachusetts Rental Voucher Program,
65 so-called (see line item 7004-9004 of Section 2 of chapter 159 of the
66 Acts of 2000, as well as 760 C.M.R. Part 49.00)

67 For purposes of this section, "governmentally involved housing"
68 shall not include the following:— (1) housing units owned or
69 acquired by the municipality through tax foreclosure; (2) housing
70 units in a one to ten family building or structure that is not part of a
71 larger housing development, whether on one or more sites; (3) struc-
72 tures containing housing units subsidized with mobile tenant-based
73 rental assistance that would not otherwise come within the definition
74 of governmentally involved housing; (4) structures containing
75 housing units which were subject to chapter 36 of the acts of 1976,
76 chapter 797 of the acts of 1969, chapter 863 of the acts of 1970,
77 chapter 843 of the acts of 1970, chapter 843 of the acts of 1971,
78 chapter 45 of the acts of 1987, chapter 504 of the acts of 1987, or
79 chapter 601 of the acts of 1981, but which would otherwise not

80 come within the definition of governmentally involved housing; (5)
81 public housing owned or operated by a local housing authority under
82 chapter 121B, the United States Housing Act of 1937, or any suc-
83 cessor act or public housing programs formerly assisted under the
84 United States Housing Act of 1937; (6) housing units which first
85 became governmentally involved after October 1, 1996, unless the
86 municipality enacts a different date; and (7) housing units where the
87 sole government involvement is the owner's participation in federal,
88 state, or municipal funded programs for home repairs, energy con-
89 servation, or lead paint abatement.

90 (B) "Formerly governmentally involved housing", housing which
91 was governmentally involved as of July 1, 1994, or which became
92 governmentally involved housing after July 1, 1994, but which is no
93 longer governmentally-involved as defined in this section.

94 (C) "Low-income", an annual income which is 80 per cent or less
95 of the median income for the area as determined by the United States
96 Department of Housing and Urban Development, with adjustments
97 for smaller and larger families.

98 Section 3. (a) Notwithstanding the provisions of any general or
99 special law to the contrary, including, without limitation, the provi-
100 sions of chapter 282 of the acts of 1994, a municipality accepting the
101 provisions of this chapter shall regulate the rent for use or occupancy
102 of governmentally involved or formerly governmentally involved
103 housing to the extent such regulation is not preempted by federal law
104 or by section 6 of chapter 708 of the acts of 1966, once the basis for
105 federal or Massachusetts Housing Finance Agency rent preemption
106 no longer exists. (b) Said municipality shall establish as the max-
107 imum rent for governmentally involved and formerly governmen-
108 tally involved housing units the rent in effect therefore on July 1,
109 1994 or six months before the basis for federal or Massachusetts
110 Housing Finance Agency rent preemption lapsed, whichever is later,
111 adjusted to insure such rent provides a fair net operating income as
112 of the date of the loss of preemption.

113 Section 4. (a) In a municipality accepting the provisions of this
114 chapter, no person shall bring an action to recover possession of a
115 governmentally involved or formerly governmentally involved
116 housing unit to the extent that such regulation is not otherwise pre-
117 empted by federal law or section 6 of chapter 708 of the acts of
118 1966, unless:— (1) the tenant has failed to pay the rent to which the

119 owner is entitled; (2) the tenant has violated an obligation or
120 covenant of tenancy not inconsistent with chapter 93A or this
121 chapter other than the obligation to surrender possession upon
122 proper notice, and has failed to cure the violation after having
123 received written notice thereof; (3) the tenant is causing, committing
124 or permitting, a nuisance in, or substantial damage to, the housing
125 unit, or is creating substantial interference with the comfort, safety,
126 or enjoyment of the owner or other occupants of the same or any
127 adjacent unit; (4) the tenant has used or permitted use of a housing
128 unit for illegal purposes; (5) the tenant, who had a written lease or
129 rental agreement which has terminated, has refused, after written
130 requests or demand by the owner, to execute a written extension or
131 renewal thereof for a further term of like duration on terms not
132 inconsistent with or violative of any provision of this act; (6) the
133 tenant has refused the owner reasonable access to the housing unit
134 for the purpose of making necessary repairs or improvements
135 required by law, or for the purpose of inspection as permitted or
136 required by the lease or by law, or for the purpose of showing the
137 housing unit to any prospective purchaser or mortgagee; (7) the
138 tenant holding at the end of a lease term is a subtenant not approved
139 by the owner; (8) for tenant-based rental assistance programs only,
140 the owner seeks to recover possession in good faith of a unit for the
141 owner's own use and occupancy or for use and occupancy by the
142 owner's spouse, children, grandchildren, great grandchildren, par-
143 ents, grandparents, brother, sister, father-in-law, mother in-law, son-
144 in-law, or daughter-in-law; or (9) the owner seeks to recover
145 possession for any other just cause not in conflict with the provisions
146 and purposes of this chapter or chapter 93A.

147 (B) The provisions of this section shall be construed as additional
148 restrictions on the right to recover possession of such housing units.

149 Section 5. In a municipality accepting the provisions of this
150 chapter, no person shall remove any governmentally involved or for-
151 merly governmentally involved housing unit from low-income rental
152 housing use, without first obtaining permission for that purpose from
153 the municipality or its designee, to the extent that such provision is
154 not preempted by federal law or section 6 of chapter 708 of the acts
155 of 1966. Such permission may be subject to terms and conditions not
156 inconsistent with the purposes and provisions of this chapter,
157 including, without limitation, (a) incentives to continue in effect the

158 low-income use restrictions previously in place for the property and
159 (b) where sale, lease, or disposition of the property may result in the
160 loss of all or a portion of the property for low-income rental housing
161 use, the right of an incorporated tenant association in such housing,
162 the municipality, the local housing authority, or non-profit commu-
163 nity development corporations to negotiate for, acquire and operate
164 such property on substantially equivalent terms and conditions as
165 offered or available to a bona-fide third-party purchaser.

166 Section 6. To the extent not preempted by federal law or section 6
167 of chapter 708 of the acts of 1966, a municipality accepting the pro-
168 visions of this chapter shall require an owner of governmentally
169 involved housing or formerly governmentally involved housing to
170 affirmatively seek out and accept any prospective government
171 housing resources, whether tenant-based or project-based, which
172 maximize affordability of the housing units consistent with the
173 income character of the property and the owner's right to obtain a
174 fair net operating income for the housing units. The appropriate state
175 and municipal agencies shall assist owners by identifying govern-
176 ment housing resources.

177 Section 7. To the extent not preempted by federal law or section 6
178 of chapter 708 of the acts of 1966, and, so long as such regulation is
179 consistent with the owner's right to obtain a fair net operating
180 income and the municipality's housing policy, a municipality
181 accepting the provisions of this chapter shall establish local prefer-
182 ences, priorities, and income limits for admission to governmentally-
183 involved housing or formerly governmentally involved housing
184 upon unit turnover, consistent, to the extent practicable, with the
185 income profile of the property twelve months prior to the date of the
186 loss of rent preemption or the decision to not renew an expiring sub-
187 sidy contract. No ordinance, by-law, or regulation shall require an
188 owner to create a tenancy involving any person with a history of
189 conduct which would, if repeated, be grounds for eviction from such
190 housing.

191 Section 8. A municipality accepting the provisions of this chapter
192 may adopt such ordinances or by-laws and promulgate such rules,
193 regulations, and orders as it may deem necessary or appropriate to
194 effectuate the purposes hereof and may grant exemptions and excep-
195 tions thereto when such action would tend to maintain or increase
196 the supply of affordable housing in the municipality, including,

197 without limitation, to promote the sale of the property to a bona-fide
198 tenant organization or non-profit community development corpora-
199 tion under terms and conditions which would tend to maintain the
200 income character of the property.

201 Section 9. Any hearings regarding matters related to regulation of
202 rents or removal permits for governmentally involved housing or
203 formerly governmentally involved housing or regarding compliance
204 with other provisions of this chapter, or any ordinance, by-law, rule,
205 or regulation adopted hereunder, shall be conducted by the munici-
206 pality or its designee in accordance with the provisions of section 11
207 of chapter 30A.

208 Section 10. All decisions of the municipality or its designee may
209 be appealed to the housing court if available, the district court or the
210 superior court in the jurisdiction or county where the municipality is
211 located by any person aggrieved thereby, whether or not previously a
212 party in the matter, within 30 calendar days after receipt of notice of
213 such decision. Judicial review of adjudicatory decisions shall be
214 conducted in accordance with section 14 of chapter 30A. Judicial
215 review of regulations shall be conducted in accordance with section
216 7 of chapter 30A. The housing, district and superior courts shall
217 have jurisdiction to enforce the provisions of this chapter and any
218 ordinance, by-law, rule, or regulation adopted under this chapter and
219 on application of the municipality or its designee or any aggrieved
220 person may restrain or enjoin violations of any such ordinance, by-
221 law, rule or regulation. In the interests of justice, the court may allow
222 any necessary parties to be joined in or to intervene in any action
223 brought hereunder and may in its discretion allow or require an
224 action to proceed as a class action.

225 Section 11. It shall be unlawful for any person to do or omit to do
226 any action in violation of this chapter or any order, ordinance, by-
227 law, rule or regulation adopted or promulgated under this chapter.
228 Whoever willfully violates any provision of this chapter or any
229 order, ordinance, by-law, rule or regulation adopted or promulgated
230 under this chapter or whoever makes a false statement in any testi-
231 mony before the municipality or its designee, or whoever knowingly
232 supplies the municipality or its designee with false information, in
233 connection with a proceeding under this chapter, shall be punished
234 by a fine of not more than \$400 or by imprisonment for not more
235 than 90 days, or both. In the case of a second or subsequent offense,

236 or where the violation continues after notice thereof, such person
237 shall be punished by a fine of not more than \$2,000, or imprison-
238 ment for not more than one year, or both.

239 Section 12. The commonwealth shall not be liable for any claims
240 or other legal action arising from the acceptance of or implementa-
241 tion of this act by any municipality.

242 Section 13. The provisions of M.G.L. Ch 40P shall not apply to
243 any ordinance adopted under this enabling authority.

244 Section 14. The provisions of this act are severable, and if any of
245 its provisions shall be held unconstitutional or otherwise invalid by
246 any court of competent jurisdiction, the decision of such court shall
247 not affect or impair any of the remaining provisions.